

FCC MAIL SECTION

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Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY

MM Docket No. 92-214

In the Matter of

Amendment of Section 73.202(b),	RM-8062
Table of Allotments,	RM-8144
FM Broadcast Stations.	RM-8145
(Columbia, Bourbon, Leasburg,	RM-8146
Gerald, Dixon and Cuba,	RM-8147
Missouri) ¹	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 27, 1995; Released: November 24, 1995

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 7 FCC Rcd 6230 (1992), issued in response to a petition for rule making filed by Al Greenfield d/b/a, The Greenfield Group ("Greenfield"), seeking the substitution of Channel 244C1 for Channel 244C3 at Columbia, Missouri, and modification of its construction permit for Station KCMQ(FM) to specify operation on Channel 244C1.² Joint comments were filed by Greenfield Group and Zimmer Radio of Mid-Missouri, Inc. ("Zimmer") in support of the upgrade at Columbia. Lake Broadcasting, Inc. ("Lake Broadcasting") filed comments. Counterproposals were filed by Jeff Weinhaus ("Weinhaus") (RM-8144), Central Missouri Broadcasting, Inc. ("Central Missouri") (RM-8146), Tony Knipp ("Knipp") (RM-8145), and Lake Broadcasting (RM-8147).³ Greenfield and Zimmer, Lake Broadcasting and Knipp filed reply comments. Weinhaus, Lake Broadcasting and Greenfield and Zimmer filed comments in response to the counterproposals. On December 20, 1993, Knipp withdrew his counterproposal for an allotment at Gerald, Missouri, pursuant to Section 1.420(j) of the Commission's Rules. On June 7, 1994, Weinhaus withdrew his counterproposal for an allotment at Leasburg, Missouri, pursuant to Section 1.420(j) of the Commission's Rules. Therefore, no further consideration will be given to the counterproposals filed by Weinhaus and Knipp or to responsive comments.⁴

2. In comments, Lake Broadcasting points out that on November 12, 1992, it filed an application for Channel 244A at Bourbon, Missouri, pursuant to the Commission's

"first come/first serve" policy in Section 73.3573(g)(3) of the Rules. Thus, Lake Broadcasting is strenuously opposed to the deletion of the frequency at Bourbon.

3. Central Missouri counterproposed the allotment of Channel 243A to Dixon, Missouri, as that community's first local broadcast service. According to Central Missouri, Dixon is an incorporated community in Pulaski County which also includes Fort Leonardwood military base. Dixon has a 1990 population of 1,585 persons. Central Missouri states that the allotment of Channel 243A at Dixon is short spaced to proposed Channel 244C1 at Columbia. Central Missouri argues that Dixon is more deserving of an allotment since it will provide the community with its first local service. Central Missouri also supports the proposed channel change at Bourbon or its deletion to accommodate Channel 243A at Dixon.

4. Lake Broadcasting, licensee of Station KBMX(FM), Eldon, Missouri, permittee of Station KFXE(FM), Cuba, Missouri, and an applicant for Channel 244A at Bourbon, Missouri, counterproposed the substitution of Channel 297C3 for Channel 271A at Cuba and retention of Channel 244A in Bourbon. Lake Broadcasting notes that it was the original petitioner for Channel 244A at Bourbon but was precluded from filing an application sooner because of the Commission's duopoly rules. Lake Broadcasting argues that Channel 297A is not currently available for allotment at Bourbon since the channel is directly implicated in MM Docket No. 89-120 (7 FCC Rcd 1449 (1992)) which is still pending. Lake Broadcasting believes the proposed use of Channel 297A at Bourbon is premature. Further, Lake Broadcasting believes that Greenfield's proposal for Channel 244C1 at Columbia violates Section 73.315(a) and (b) of the rules as city grade coverage is not provided and the proposal has significant line-of-sight problems. Lake Broadcasting argues that the clear violation of the engineering mandates of Sections 73.315(a) and (b) require the outright denial of Greenfield's proposal. Moreover, Lake Broadcasting contends that Channel 244A cannot be deleted at Bourbon in light of Lake Broadcasting's application and that the upgrading of its present class A allotment at Cuba is consistent with the Commission's Rules and would provide a far superior use of the frequency than allotting it to Bourbon in lieu of Channel 244A. Lake Broadcasting submits that the public interest would best be served by retaining Channel 244A in Bourbon and adopting its counterproposal to upgrade its present class A allotment at Cuba to Channel 297C3.

5. Greenfield and Zimmer, in joint reply comments, believe that Lake Broadcasting's last minute filing of an application for Channel 244A at Bourbon should not persuade the Commission to retain the channel as Lake Broadcasting had ample opportunity to file its application earlier. Greenfield and Zimmer state that the application filed by Lake Broadcasting may have been filed for the anticompetitive purpose of blocking Station KCMQ(FM) from being upgraded as Lake Broadcasting shares common officers and ownership with Contemporary Broadcasting, Inc., licensee of Station KFMZ(FM), Columbia,

¹ The communities of Leasburg, Gerald, Dixon and Cuba have been added to the caption.

² An assignment of license from the Greenfield Group to Zimmer Radio of Mid-Missouri, Inc. was granted on July 15, 1993, and consummated on August 11, 1993 (BALH-92-1015EB).

³ The counterproposals were put on public notice on December 29, 1992 (Report No. 1922).

⁴ Weinhaus requested the allotment of Channel 297A or Channel 231A at Leasburg, Missouri, as that community's first local service. Knipp proposed the allotment of Channel 297C3 at

KCMQ(FM)'s competitor.⁵ Although Lake Broadcasting claims there are two engineering bases for denying the proposed upgrade at Columbia, Greenfield and Zimmer argue that the proposal complies with Section 73.315(a) taking into account the terrain along the radial in the direction of Columbia reference point. Further, Greenfield and Zimmer provide a technical statement which concludes there are no major or minor obstructions between the reference point and the Columbia city limits which would result in shadowing in Columbia. Thus, the proposal also complies with Section 73.315(b) of the Commission's Rules. In response to Lake Broadcasting's contentions that the allotment of Channel 244C1 is contingent on the outcome of Docket 89-120, Greenfield and Zimmer disagree. Greenfield and Zimmer remind Lake Broadcasting that deletion of Channel 244A at Bourbon was an option proposed to accommodate Channel 244C1 at Columbia as well as substitution of Channel 297A for Channel 244A. Further, the original petition filed by Greenfield Group proposed the substitution of either Channel 231A or Channel 297A for the vacant allotment at Bourbon. Greenfield and Zimmer contend that because of the options available for Bourbon, the allotment of Channel 244C1 at Columbia is not a contingent proposal. Finally, Zimmer points out that Lake Broadcasting's counterproposal to substitute Channel 297C3 for Channel 271A at Cuba, Missouri, constitutes a nonadjacent channel upgrade and Station KFXE's construction permit could not be modified without considering competing expressions of interest pursuant to Section 1.420(g)(1) of the Commission's Rules. Zimmer hereby expresses its intent to file an application for Channel 297C3 at Cuba in the event the channel is allotted to Cuba.

6. In reply comments, Lake Broadcasting states that the *Notice* incorrectly indicated that Channel 297 was available for allotment at Bourbon. Lake Broadcasting argues that since the channel is presently "tied up" in Docket 89-120, it is premature for the Commission to consider allotting it to Bourbon. Lake Broadcasting also argues that Greenfield's proposal does not provide Columbia with city grade coverage and has significant line-of-sight problems. In lieu of Greenfield's proposal for Columbia and Bourbon, Lake

Broadcasting urges the Commission to substitute Channel 297C3 for Channel 271A at Cuba, Missouri, and retain Channel 244A at Bourbon, Missouri.

7. Conflicting proposals, such as have been filed in this proceeding, are comparatively considered under the guidelines set forth in *Revision of FM Assignment and Policies and Procedures*, 90 FCC Rcd 2d 88 (1982).⁶ However, because of the withdrawal of two counterproposals and the availability of alternate channels, such a comparison is no longer necessary in this proceeding.⁷ In response to the proposal filed by Greenfield, we shall substitute Channel 244C1 for Channel 244C3 at Columbia, Missouri, and modify the license for Station KCMQ(FM) accordingly, in compliance with the Commission's spacing requirements.⁸ A Commission analysis indicates that from Greenfield's specified site, city grade coverage will be provided to Columbia without a line-of-sight problem. To accommodate Channel 244C1 at Columbia, we shall substitute Channel 231A rather than Channel 297A, as proposed in the *Notice*, for Channel 244A at Bourbon. Although the *Notice* also proposed to delete the channel, Lake Broadcasting filed an application for Channel 244A during the comment cycle in this proceeding which removes the basis for deletion of the channel. *See Lindsborg and Sterling, Kansas*, 8 FCC Rcd 7287 (1993). Should it later appear, however, that there is undue delay in activating the channel in Bourbon, we would consider a further petition to remove the channel from the community. Channel 231A can be allotted to Bourbon, Missouri, in compliance with the Commission's spacing requirements provided there is a site restriction 8 kilometers (5 miles) south of the community.⁹ The site restriction will prevent a short spacing to Station KPCR-FM, Channel 231C3, Bowling Green, Missouri and to Station KSHE, Channel 234C, Crestwood, Missouri. The applicant for Channel 244A, Lake Broadcasting, will be given cut-off protection and an opportunity to amend its application to specify operation on Channel 231A.¹⁰ With respect to Greenfield and Zimmer's allegation that the application filed by Lake Broadcasting could have been filed merely to block the requested upgrade for Station KCMQ(FM), Greenfield and Zimmer have failed to provide proof of this allegation. In response to the counter-

Gerald, Missouri, as that community's first local service.

⁵ Contemporary Broadcasting Inc. filed a Petition to Deny Greenfield's application to assign KCMQ(FM)'s license to Zimmer.

⁶ The priorities are (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight given to priorities (2) and (3)].

⁷ Although not a deciding factor in this proceeding, a staff analysis was performed to determine which community, Columbia or Cuba, would provide new service to a larger population with upgraded facilities. The upgrade at Columbia would result in a gain area of 12,282 square kilometers with a population of 178,358 people. There would be a loss of 305 square kilometers with 1,274 people. The upgrade at Cuba would result in a gain area of 1,922 square kilometers with a population of 36,302 people. Also, Columbia receives service from nine FM stations and one AM station while Cuba receives service from eight FM stations and one AM station.

⁸ The coordinates for Channel 244C1 at Columbia are 38-37-40 and 92-07-00.

⁹ The coordinates for Channel 231A at Bourbon are 38-05-00 and 91-15-00. Although Channel 231A at Bourbon is short spaced to Station KOMX, Channel 232A, Rolla, Missouri, the

license for Station KOMX was modified to specify operation on Channel 248A in MM docket No. 91-181. *See* 9 FCC Rcd 2306 (1994).

¹⁰ We recognize that the use of Channel 231A at the transmitter site specified in Lake Broadcasting's application for Channel 244A (38-05-22 and 91-10-13) at Bourbon will result in a 4.6 kilometer short-spacing to Station KSHE(FM), Channel 234C, Crestwood, Missouri. To remedy this short-spacing, Lake Broadcasting could utilize the contour protection provisions of Section 73.215 of the Commission's Rules or amend its application to specify a new transmitter site. With respect to the latter option, we note that the *Notice* in this proceeding originally proposed to delete Channel 244A at Bourbon or, alternatively, to allot Channel 297A if an application were filed for Channel 244A. As a result, Lake Broadcasting has been on notice of the possibility of amending its application to specify a different channel. Further, the use of Channel 231A at Bourbon in lieu of Channel 297A is in accord with *Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments*, 7 FCC Rcd 4917 (1992), *recon. granted in part*, 8 FCC Rcd 4743 (1993), because it was suggested by the Columbia rulemaking proponent in its rulemaking petition which was filed prior to Lake Broadcasting's application. *See Conflicts*, 7 FCC Rcd at 4920, para. 14.

proposal filed by Central Missouri for the allotment of a channel at Dixon, Missouri, we shall allot Channel 221A. Channel 221A can be allotted to Dixon with a site restriction 6.8 kilometers (4.2 miles) west of the community.¹¹ The site restriction will prevent a short spacing to Station WILF-FM, Channel 222C, St. Louis, Missouri. Finally, we shall deny Lake Broadcasting's request to modify its construction permit for Station KFXE to specify operation on Channel 297C3 in lieu of Channel 271A. The proposal constitutes a non-adjacent upgrade which cannot be implemented if another party expresses an interest in the channel, unless an additional equivalent channel could be made available for application. Zimmer Radio of Mid-Missouri, Inc. has stated its intention to file an application for Channel 297C3 at Cuba. A staff engineering analysis indicates no other channels are available for allotment at Cuba. Therefore, we shall allot Channel 297C3 to Cuba as a second FM broadcast service and make the channel available for application. Channel 297C3 can be allotted to Cuba, Missouri, in compliance with the Commission's spacing requirements without a site restriction.¹²

8. In taking the actions described above, we recognize that the Commission recently released an *Order to Show Cause and Notice of Apparent Liability ("OSC")*, MM Docket No. 95-154, FCC 95-410, released October 10, 1995, regarding the basic character qualifications of Lake Broadcasting to remain a Commission licensee. Specifically, the OSC designated for hearing whether Lake Broadcasting's licenses and construction permits should be revoked based upon the felony convictions of Michael Rice, the President, Treasurer, and 67.5% shareholder of Lake Broadcasting. The OSC further stated that "...[a]ll such pending applications and rulemaking proceedings involving [Lake] will be held in abeyance pending resolution of this proceeding." OSC at para. 2. However, inasmuch as Lake Broadcasting's counterproposal for an upgrade for its Cuba station is being denied strictly for allocations or technical reasons, we do not believe that it is necessary or appropriate to hold this particular rulemaking in abeyance to the detriment of the upgrade proponent at Columbia. Likewise, we do not believe that requiring Lake Broadcasting to amend his

application for a new station at Bourbon to specify Channel 231A in lieu of Channel 244A requires holding this particular rulemaking proceeding in abeyance pending the outcome of the character hearing. Rather, requiring such an amendment merely reflects the fact that the underlying channel applied for at Bourbon has been changed to accommodate the upgrade at Columbia as proposed in the *Notice* in this proceeding and is without prejudice to any character-related matters involving that application.

9. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **January 9, 1996**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

Community	Channel No.
Bourbon, Missouri	231A
Columbia, Missouri	244C1, 252C2, 268C1, 272A
Cuba, Missouri	271A, 297C3
Dixon, Missouri	221A

10. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the construction permit for Station KCMQ(FM), Columbia, Missouri, IS MODIFIED to specify operation on Channel 244C1, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the permittee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

¹¹ The coordinates for Channel 221A at Dixon are 37-58-30 and 92-10-10. We also recognize that these coordinates conflict with Lake's suggested use of Channel 221A as alternative channel to be substituted at Waynesville, MO for Channel 272A in connection with its pending petition for reconsideration in MM Docket No. 89-120. In that docket, Lake filed a counterproposal to upgrade its Station KBMX(FM), Eldon, Missouri, from Channel 270A to Channel 270C1. This in turn required the substitution of Channel 274A for Channel 272A at Waynesville and the modification of Station KJPW(FM)'s license accordingly as well as a related channel substitution at Cuba, which is discussed *infra* at note 12. In reply comments to the counterproposals in MM Docket 89-120, Lake suggested that Channel 221A could be substituted for Channel 272A at Waynesville to eliminate a conflict with another counterproposal to allot Channel 274A to Lake Ozark, Missouri. The *Report and Order* in Docket 89-120 allotted Channel 274A to Lake Ozark and also determined that Channel 221A at Waynesville could not be substituted because it was unavailable. Lake, in its pending petition for reconsideration, challenges the unavailability of Channel 221A at Waynesville. Although the Eldon proceeding is being held in abeyance for reasons discussed in note 12, we see no reason to defer allotting Channel 221A at Dixon and opening a filing window because in Docket 89-120 Lake has stated its willingness to accept a Class C2 upgrade at Eldon which requires no channel substitution at Waynesville or any other

community. However, the processing of the applications for Channel 221A at Dixon may be deferred pending the outcome of MM Docket 89-120.

¹² The coordinates for Channel 297C3 at Cuba are 38-03-54 and 91-24-12. We recognize that these coordinates conflict with one of two options proposed in a Petition for Reconsideration in MM Docket 89-120 by Lake Broadcasting. Specifically, these reference coordinates conflict with the substitution of Channel 297A for Channel 271A at Cuba, Missouri, and the modification of Lake Broadcasting's construction permit accordingly, which is necessary to accommodate Lake Broadcasting's proposed upgrade of its station KBMX(FM), Eldon, Missouri, from Channel 270A to 270C1. Since this rulemaking proceeding involves a station licensed to Lake Broadcasting and controlled by Mr. Rice, it is being held in abeyance pending the outcome of MM Docket No. 95-154. See *infra* para 8. Nevertheless, we see no reason to defer opening a filing window for Channel 297C3 at Cuba because Lake Broadcasting has stated in its reconsideration petition that it would also be willing to accept a Class C2 upgrade at Eldon, which does not require a related channel substitution at Cuba, and because Lake has filed a one-step upgrade application for a C2 channel at Eldon (BPH-930922IE). However, the processing of the applications for Channel 297C3 at Cuba may be deferred pending the outcome of MM Docket 89-120.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

11. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Zimmer Radio of Mid-Missouri, Inc., permittee, of Station KCMQ(FM), is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade.

12. The window period for filing applications for Channel 297C3 at Cuba, Missouri, and Channel 221A at Dixon, Missouri, will open on **January 9, 1996**, and close on **February 9, 1996**.

13. IT IS FURTHER ORDERED, That the counterproposal filed by Lake Broadcasting (RM-8147) IS DENIED.

14. IT IS FURTHER ORDERED, That the counterproposals filed by Jeff Weinhaus (RM-8144) and Tony Knipp (RM-8145) ARE DISMISSED.

15. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

16. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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